

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 3536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

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Subpart 3536.1—General

3536.101 Applicability.

(a) Construction, which includes alteration, maintenance, and repair of real property, and architect-engineer contracts are subject to the requirements in other parts of this regulation, which shall be followed when applicable.

(b) When a requirement in this part is inconsistent with a requirement in another part of this regulation, this part 3536 shall take precedence if the acquisition of architect-engineer services is involved.

3536.103 Methods of contracting.

(a) Notwithstanding the exception in FAR 36.103(a) for contracts to be performed outside the United States, construction in Panama shall be acquired using sealed bid procedures, unless one of the four conditions in FAR 6.401(a) cannot be met. In that event, the contracting officer shall document the contract file in accordance with FAR 6.401.

(b) Contracting officers shall acquire architect-engineer services by negotiation, and select sources in accordance with applicable law, FAR subpart 36.6, and subpart 3536.6 of this regulation.

Subpart 3536.2—Special Aspects of Contracting for Construction

3536.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.* The authorized representative of the contracting officer (COR) shall prepare the contractor performance report prescribed in FAR 36.201 within two weeks after final acceptance of the work or contract termination. Prior to submitting any report of unsatisfactory performance to the reviewing official, the COR shall advise the contractor of any proposed unsatisfactory rating and include any written comments from the contractor regarding such rating in the report (see FAR 36.201(a)(3)).

(b) *Review of performance reports.* The contracting officer shall review each performance report.

(c) *Distribution and use of performance reports.* Information from the performance report shall not be released outside of the Commission, except to other Government agencies at their written request, and on condition that the information will not be made available outside the Government. Requests from non-Government sources for information from performance reports shall be processed in accordance with 35 CFR part 9.

3536.203 Government estimate of construction costs.

(c) The overall amount of the Government's estimate shall not be disclosed prior to award under any circumstance to persons other than Commission personnel whose official duties, as determined by the contracting officer, require knowledge of the estimate.

3536.207 Pricing fixed-price construction contracts.

3536.207-70 Use of indefinite-delivery contracts.

Any of the forms of indefinite-delivery contracts described in FAR subpart 16.5 may be used to contract for construction when deemed appropriate by the contracting officer.

3536.209 Construction contracts with architect-engineer firms.

No contract for construction shall be awarded to the firm, or its subsidiaries or affiliates, that designed the project except with the approval of the Head of Contracting Activity.

3536.270 Special aspects of contracting for construction in Panama.

3536.270-1 General.

In contracts which are entered into with Panamanian or other foreign contractors for performance in Panama, the term "United States" shall appear before the word "Government."

3536.270-2 Special contract considerations.

When construction is to be performed in the Republic of Panama by des-

ignated United States contractors, Panamanian contractors, or others, the solicitation and contract should include references to the applicable laws, regulations, treaties, and agreements of the United States and the Republic of Panama (see subpart 3525.8) relating to:

(a) The duty-free importation of material and equipment;

(b) The payment of taxes applicable to contractors, personnel, materials, and equipment (see parts 3525 and 3529);

(c) The applicability of workmen's compensation laws and other labor laws to citizens of the United States, citizens of Panama, and citizens of other countries (see subpart 3528.3);

(d) The provision of utility services;

(e) The provision of Commission or Government-owned materials or services;

(f) The disposition of surplus materials and equipment;

(g) The need for civil liability insurance for employees of contractors and subcontractors (see 3528.301);

(h) The handling of claims and litigation;

(i) The requirements for bid or proposal guarantees, performance bonds, and payment bonds (see subpart 3528.1);

(j) Acceptability of sureties not listed in Treasury Department Circular 570 (see subpart 3528.2);

(k) Consideration of Panamanian preference in accordance with part 3570;

(l) Any other special solicitation provisions prescribed in subpart 3536.3; and

(m) Any other problems which can be foreseen and appropriately resolved contractually.

Subpart 3536.3—Special Aspects of Sealed Bidding in Construction Contracting

3536.303 Invitations for bids.

3536.370 Additive items.

Prior to the issuance of an invitation for bids, the contracting officer shall ascertain that adequate funds have been certified as being available for the proposed acquisition. However, if funds

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appear to be insufficient for all features of the Government's requirement, the contracting officer shall insert in the invitation a solicitation provision for a base bid and one or more additive items, as prescribed at 3536.371(a) (7) or (8).

3536.371 Solicitation provisions.

(a) The contracting officer shall insert the following provisions in invitations for bids for construction when applicable:

(1) The provision at 3552.214-70, Price—Sealed Bidding, as prescribed at 3514.201-6(a)(1);

(2) The provision at 3552.214-71, Additional Data To Be Submitted, as prescribed at 3514.201-6(b)(1);

(3) The provision at 3552.214-72, Rejection of Bids, as prescribed at 3514.201-6(b)(2);

(4) The provision at 3552.214-73, Caution—Sealed Bidding, as prescribed at 3514.201-6(a)(2);

(5) The provision at 3552.214-75, All or None Award—Sealed Bidding—Construction, as prescribed at 3514.201-6(d);

(6) The provision at 3552.236-70, Mailing of Correspondence and Bids, in all invitations for bids for construction;

(7) The provision at 3552.236-71, Additive Items, in invitations for bids for construction that contain one or more additive bid items to be awarded with the base bid item in the numerical order of priority that the additive bid items appear in the bid schedule within the funds available;

(8) The provision at 3552.236-71, Additive Items—Alternate I, in invitations for bids for construction that contain one or more additive bid items to be awarded with the base bid item in any combination within the funds available; and

(9) The provision at 3552.236-72, Cost Limitation, in invitations for bids for construction that contain one or more items subject to statutory cost limitations, except when a waiver has been granted pursuant to FAR 36.205.

(b) The contracting officer shall insert the following provisions in negotiated solicitations for construction when applicable:

(1) The provision at 3552.215-70, Price, as prescribed at 3515.407(a)(1);

(2) The provision at 3552.215-71, Caution, as prescribed at 3515.407(a)(2); and

(3) The provision at 3552.215-72, All or None Award, as prescribed at 3515.407(b).

(c) The contracting officer shall insert the provision at 3552.209-70, Organizational Conflict of Interest Certification/Disclosure, in invitations for bids and negotiated solicitations for construction when applicable, as prescribed at 3509.508-1.

Subpart 3536.5—Contract Clauses and Form

3536.570 Special Panama Canal Commission contract clauses.

The contracting officer shall insert the following clauses in solicitations and contracts for construction when applicable:

(a) The clause at 3552.225-70, Language, as prescribed at 3525.801-76(a);

(b) The clause at 3552.225-71, Notice of Applicability of United States Federal Law, as prescribed at 3525.801-76(b);

(c) The clause at 3552.225-72, Designated Contractors, as prescribed at 3525.801-76(c);

(d) The clause at 3552.225-73, Responsibility for Observance of Laws, Orders, and Regulations, as prescribed at 3525.801-76(d);

(e) The clause at 3552.228-70, Bid Guarantee Amount, or the clause at 3552.228-75, Proposal Guarantee, as prescribed at 3528.101-3(a). If the proposal guarantee clause is used, the bid guarantee clause at FAR 52.228-1 shall not be used (see 3528.101-3(b));

(f) The clause at 3552.228-71, Bonds and Insurance, as prescribed at 3528.102-3;

(g) The clause at 3552.228-72, Bonds, as prescribed at 3528.102-3;

(h) In addition to FAR clause 52.228-3, Workers' Compensation Insurance (Defense Base Act), the clause at 3552.228-73, Non-U.S. Workers' Compensation Insurance, as prescribed at 3528.309(a);

(i) The clause at 3552.228-74, Special Panama Insurance, as prescribed at 3528.370;

(j) In addition to FAR clause 52.232-5, Payments Under Fixed-Price Construction Contracts, the clause at 3552.232-70, Contract Payments, as prescribed at

3532.111(a)(7), the clause at 3552.232-72, Presentation of Statement of Release from Claims, as prescribed at 3532.806(a), and the clause at 3552.232-73, Invoices, as prescribed at 3532.111(a)(8);

(k) The clause at 3552.236-73, Scope of Work, in all solicitations and contracts for construction;

(l) In addition to FAR clause 52.236-10, Operations and Storage Areas, the clause at 3552.236-74, Work Sites, Yards, Shops, and Offices, when a fixed-price construction contract is contemplated;

(m) The clause at 3552.236-75, Work Time Limitations, in all solicitations and contracts for construction;

(n) In lieu of FAR clause 52.236-13, Accident Prevention, insert the clause at 3552.236-76, Accident Prevention, when a fixed-price construction contract is contemplated;

(o) The clause at 3552.236-77, Working in Confined Spaces, when the contracting officer anticipates that the contractor may have to work in confined or enclosed spaces;

(p) The clause at 3552.236-78, Safety Sign, when the contracting officer determines that the location of the work site warrants its inclusion;

(q) The clause at 3552.236-79, Protection of Material and Work, in all solicitations and contracts for construction;

(r) The clause at 3552.236-80, Toilet Facilities, when the contracting officer determines that the location of the work site warrants its inclusion;

(s) The clause at 3552.236-81, Drinking Water, when the contracting officer determines that the location of the work site warrants its inclusion;

(t) In addition to FAR clause 52.236-15, Schedules for Construction Contracts, the clause at 3552.236-82, Contract Bid Breakdown, when a fixed-price construction contract is contemplated and the period of actual work performance is expected to exceed 60 days;

(u) In addition to FAR clause 52.236-21, Specifications and Drawings for Construction, and FAR clause 52.236-5, Material and Workmanship, the clauses at: 3552.236-83, Descriptive Data and Correspondence, 3552.236-84, Instruction Books, and 3552.236-85, Record Drawings, when a fixed-price construction contract is contemplated;

(v) The clause at 3552.236-86, Restricted Areas, when the contracting officer anticipates that any portion of the contract work may have to be performed in a restricted area;

(w) The clause at 3552.243-70, Modification Proposals—Price Breakdown, as prescribed at 3543.205;

(x) The clause at 3552.244-70, Subcontractors, in all solicitations and contracts for construction;

(y) The clause at 3552.236-87, Surplus Space, in all solicitations and contracts for construction. The clause may also be used in solicitations and contracts for supplies or services if the contracting officer determines that its use is appropriate.

(z) The clause at 3552.209-71, Organizational Conflict of Interest, as prescribed at 3509.508-2.

3536.571 Special Panama Canal Commission form.

Panama Canal Form 3062, Submittal Data For Approval, shall be used by contractors as a transmittal document when data and/or samples are to be submitted for the contracting officer's approval pursuant to FAR clause 52.236-5 or clause 3552.236-83 of this regulation.

Subpart 3536.6—Architect-Engineer Services

3536.602 Selection of firms for architect-engineer contracts.

3536.602-2 Evaluation boards.

(a) The Panama Canal Commission Architect-Engineer Evaluation Board is established as a central board within the Commission under authority delegated to the Director, Engineering and Construction Bureau. The Board shall perform all Commission architect-engineer evaluations, data collection, and files maintenance. The Commission Board shall be composed of not less than three nor more than five voting members and one non-voting advisory member from the contracting office. The following constitutes the minimum composition of the Board:

(1) Member and Chairman—A designee of the Chief, Engineering Division;

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(2) Member—A professional engineer or architect from a division of one of the Commission's other bureaus, to be designated by the Chairman;

(3) Member—A program official initiating the requirement or a designated representative; and

(4) Advisory Member—A contracting officer or representative.

(b) The Chief, Engineering Division may appoint additional voting members as may be appropriate for a particular project.

(c) In the event of an emergency or extended absence, a member may designate, in writing, with the concurrence of the Chairman, an alternate experienced in architecture, engineering, or construction to serve in the member's absence.

(d) The duties of the advisory member shall include, but not be limited to, assuring that—

(1) The criteria set forth in the public notice are applied in the evaluation process; and

(2) Actions taken during the evaluation process do not compromise subsequent procurement actions.

3536.602-4 Selection authority.

The Director, Engineering and Construction Bureau shall serve as the Commission's selection authority for the evaluation board.

3536.602-5 Short selection processes for contracts not to exceed \$10,000.

Both short selection processes permitted by FAR 36.602-5 are authorized.

3536.604 Performance evaluation.

Evaluation of architect-engineer contracts shall be in accordance with the procedures prescribed in 3536.201, except that SF 1421, Performance Evaluation (Architect-Engineer), shall be used in lieu of SF 1420, and that a copy of the performance evaluation shall be provided to the Architect-Engineer Evaluation Board for its files pursuant to FAR 36.604(c).

3536.605 Government cost estimate for architect-engineer work.

(b) The overall amount of the Government's cost estimate shall not be disclosed under any circumstance to persons other than Government per-

sonnel whose official duties, in the judgment of the contracting officer, require knowledge of the estimate.

3536.606 Negotiations.

(a) Negotiations shall be conducted with the first selected architect-engineer until a price which is fair and reasonable and not in excess of the Government estimate, revised to correct errors of fact or judgment, has been obtained. When the negotiations result in a price in excess of the Government estimate, as revised, the contracting officer shall terminate the negotiations and request a proposal from the architect-engineer next in order of preference.

(1) In no event shall a contract for architect-engineer services for the preparation of designs, plans, drawings and specifications exceed the statutory limitation of six percent (6 percent) of the estimated construction costs of the project. If the contract also covers any type of services other than the preparation of designs, plans, drawings and specifications, the part of the contract price for such other services shall not be subject to the six percent (6 percent) limitation.

3536.606-70 Modifications.

When a modification involves work not initially included in the contract, the limitation on the total contract price set forth in 3536.606(a)(1) is applicable, as applied to the revised total estimated construction costs. When redesign is required and the contract is modified, the following method shall be used to insure that the six percent (6 percent) statutory limitation is not exceeded:

(a) The estimated construction cost of the redesigned features will be added to the original estimated construction cost;

(b) The contract cost for the original design will be added to the contract cost for redesign; and

(c) The total contract design cost obtained by paragraph (b) of this subsection will be divided by the total construction cost obtained by paragraph (a) of this subsection. The resulting percentage may not exceed the six percent (6 percent) statutory limitation.

3536.670 Government rights to plans, specifications, and drawings.

All solicitations and contracts for architect-engineer services or for construction involving architect-engineer services, except those involving “standard types of construction”, shall contain the clause at 3552.227–70, Government Rights, as prescribed at 3527.304–3(b).

PART 3537—SERVICE CONTRACTING

Sec.

3537.000 Scope of part.

Subpart 3537.1—Service Contracts—General

3537.102 Policy.

3537.104 Personal services contracts.

3537.104–70 Procedures.

Subpart 3537.2—Advisory and Assistance Services

3537.200 Scope of subpart.

3537.202 Policy.

3537.204 Exclusions.

3537.206 Requesting activity responsibilities.

3537.206–70 Procedures.

3537.270 Duration.

AUTHORITY: 40 U.S.C. 486(c).

SOURCE: 55 FR 7662, Mar. 2, 1990, unless otherwise noted.

3537.000 Scope of part.

This part implements FAR part 37 and provides additional Commission policies and procedures for the acquisition of personal and nonpersonal services, including advisory and assistance services.

Subpart 3537.1—Service Contracts—General**3537.102 Policy.**

(a) The Commission’s policy regarding the contracting out of commercial services is set forth at 3507.301.

3537.104 Personal services contracts.

(b) Authority for the acquisition by contract of the personal services of experts and consultants is found at 5 U.S.C. 3109 which provides that, when authorized by an appropriation or

other statute, the head of an agency may acquire by contract the temporary (not to exceed one year) or intermittent services of experts or consultants. For the purpose of this section, the terms “experts” and “consultants” are not interchangeable. Consequently, their meanings are distinguishable from the meaning of the collective term “Individual experts and consultants” at FAR 37.203(a). As used herein, an “expert” is an individual who is a recognized professional or highly skilled practitioner normally used to perform or supervise an operating function, rather than to provide advisory or consulting services. A “consultant”, as used herein, is an individual possessing special, current knowledge or skill who primarily serves in an advisory capacity in a particular field, rather than in the performance or supervision of an operating function. Acquiring the personal services of individual experts or consultants shall be subject to the limitations applicable to advisory and assistance services at FAR 37.202(c). In addition, the services of individual experts and consultants shall be acquired through personal services contracts only—

(1) When the services required cannot be obtained by appointment in accordance with standard Commission personnel procedures, and

(2) If the nature of the duties to be performed is temporary (not more than one year) or intermittent (not cumulatively more than 130 days in one year). Accordingly, no such contract shall be entered into for longer than one year at a time.

3537.104–70 Procedures.

Requests for the acquisition of personal services should include:

(a) A description of the services to be performed;

(b) Name and address of the person or firm;

(c) Background material to show the unique qualifications of such person or firm to accomplish the requirement;

(d) Place where the duties are to be performed and the period of service;

(e) The estimated cost; and

(f) Determinations that:

(1) It is not feasible to obtain personnel with the necessary skills